

Message Text

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PAGE 01 BOGOTA 04295 302208Z

67

ACTION L-03

INFO OCT-01 ARA-06 ISO-00 EB-07 COME-00 TRSE-00 JUSE-00

CIAE-00 DODE-00 PM-04 H-02 INR-07 NSAE-00 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 /060 W

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P 302059Z APR 76

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 4838

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FOR L/PM

E.O. 11652: N/A

TAGS: PGOV, PFOR, CO

SUBJECT: CABINET TASK FORCE ON QUESTIONABLE PQYMENTS

ABROAD: FOREIGN LAWS ON QUESTIONABLE PAYMENTS

REF: STAE 094647

1. FOLLOWING ARE REPLIES TO QUESTIONS CONTAINED REFTEL:

A. DOES COLOMBIA HAVE SPECIFIC OR GENERAL PENAL
LEGISLATION PUNISHING THE OFFER, SOLICITATION, GIVING OR
RECEIPT OF MONIES OR OTHER THINGS OF VALUE TO INFLUENCE
OR ATTEMPT TO INFLUENCE OFFICIAL ACTIONS?

ANSWER: YES. ARTICLES 156 THROUGH 166 OF THE PENAL
CODE PROVIDE FOR FINES AND PRISON TERMS OF UP TO 10 YEARS
FOR PUBLIC EMPLOYEES (INCLUDING JUDGES) WHO DIRECTLY OR
INDIRECTLY SEEK OR ACCEPT MONEY OR ANY OTHER THING OF
VALUE TO INFLUENCE OFFICIAL DECISIONS OR ACTIVITIES. THE
PERSON GIVING OR OFFERING THE BRIBE MAY BE JAILED FOR UP TO
FIVE YEARS.

B. DOES COLOMBIA HAVE ANY LAWS OR REGULATIONS REQUIRING
DISCLOSURE OF PAYMENTS MADE TO OR FOR THE BENEFIT OF GOVERNMENT
OFFICIALS?

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PAGE 02 BOGOTA 04295 302208Z

ANSWER: YES, IF ARTICLE 446 OF THE COMMERCIAL CODE

(PARA. 3, SUPARAS. C AND D) IS GIVEN LITERAL INTERPRETATION. THIS ARTICLE PROVIDES THAT COMPANIES, IN PREPARING THEIR ANNUAL REPORTS, MUST ITEMIZE EXPENSES FOR ADVERTISING AND PUBLIC RELATIONS, AND CONTRIBUTIONS OF MONEY OR OTHER GOODS TO PRIVATE OR LEGAL ENTITIES. SEVERAL ARTICLES OF THE CONSTITUTION AND ARTICLE 172 OF THE POLICE CODE REGULATE CERTAIN POLITICAL RIGHTS, INCLUDING CAMPAIGN CONTRIBUTIONS, WHICH ARE RESERVED TO COLOMBIANS. SEVERAL DECREE LAWS REQUIRE THE LISTING ON TAX RETURN OF DONATION OR CONTRIBUTIONS TO GOVERNMENT ENTITIES OR TO NON-PROFIT ORGANIZATIONS IF THE DONOR WISHES TO TAKE A DEDUCTION.

C. DOES COLOMBIA HAVE ANY LAWS OR REGULATIONS GOVERNING THE INVOLVEMENT OF AGENTS IN SALES OR INVESTMENT TRANSACTIONS WITH THE GOVERNMENT?

ANSWER: YES. ARTICLES 32 AND 33 OF DECREE 150 OF 1976 GENERALLY PROHIBIT THE GOVERNMENT FROM MAKING AWARDS TO OR ENTERING INTO CONTRACTS WITH NATURAL OR JURIDICAL PERSONS WHO ARE NOT REGISTERED WITH THE CHAMBER OF COMMERCE OR, IN SOME INSTANCES, WITH THE GOVERNMENT AGENCY AWARDING THE CONTRACT. ARTICLES 1317 THROUGH 1331 OF THE COMMERCIAL CODE APPLY TO AGENTS WHETHER THEY DEAL WITH THE PRIVATE SECTOR OR THE GOVERNMENT, HOWEVER, NO SPECIFIC REFERENCE IS MADE TO SALES OR INVESTMENT TRANSACTIONS WITH THE GOVERNMENT. BRIEFLY, THESE ARTICLES COVER ESTABLISHMENT AND TERMINATION OF AN AGENCY AGREEMENT, THE RIGHTS AND DUTIES OF AGENTS AND THE APPLICABILITY OF COLOMBIAN LAW TO CONTRACTS SIGNED OR EXECUTED IN COLOMBIA.

D. DOES COLOMBIA HAVE LEGISLATION PROHIBITING OR RESTRICTING POLITICAL CONTRIBUTIONS BY INDIVIDUALS OR CORPORATIONS?

ANSWER: YES. ARTICLE 172 OF THE POLICE CODE PROHIBITS FOREIGNERS (WHICH CAN PROBABLY BE INTERPRETED TO INCLUDE FOREIGN CORPORATIONS AS WELL AS INDIVIDUALS) FROM MAKING CONTRIBUTIONS TO POLITICAL CAMPAIGNS. IN ADDITION, SEVERAL ARTICLES OF THE CONSTITUTION LIMIT THE POLITICAL ACTIVITIES OF FOREIGNERS. CONTRIBUTIONS TO GOVERNMENT OFFICIALS, WHETHER BY COLOMBIANS OR FOREIGNERS, COULD LEAD TO PROSECUTION UNDER THE CRIMINAL CODE.

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PAGE 03 BOGOTA 04295 302208Z

E. DOES COLOMBIA HAVE ANY LAWS OR REGULATIONS REQUIRING DISCLOSURE OF POLITICAL CONTRIBUTIONS BY INDIVIDUALS OR CORPORATIONS?

ANSWER: YES. SEE ANSWER TO QUESTION B.

F. DOES COLOMBIA HAVE ANY LAWS OR REGULATIONS PROHIBITING THE OFFER, SOLICITATION, PAYMENT OR RECEIPT

OF KICKBACKS OR OTHER UNDISCLOSED PAYMENTS OR COMMISSIONS
TO INFLUENCE THE CORPORATE DECISION-MAKING PROCESS IN
CONNECTION WITH COMMERCIAL TRANSACTIONS NOT INVOLVING
GOVERNMENT OFFICIALS OR AGENCIES?

ANSWER: THERE IS NO SPECIFIC NORM. HOWEVER, BY
INTERPRETATION, ARTICLE 200 OF THE COMMERCIAL CODE
MIGHT APPLY. THIS ARTICLE MAKES THE ADMINISTRATORS
OF A COMPANY RESPONSIBLE FOR DAMAGES TO THE COMPANY,
THE STOCKHOLDERS OR THIRD PARTIES IF THESE DAMAGES
RESULT FROM FRAUD OR NEGLIGENCE ON THE PART OF THE
ADMINISTRATORS.

2. TEXTS OF THE APPROPRIATE LAWS AND A LEGAL OPINION
EXPANDING ON ANSWER TO QUESTION D ARE BEING FURNISHED
TO L/PM
VAKY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BRIBERY, BUSINESS FIRMS, FOREIGN INVESTMENTS, FINANCIAL CONTRIBUTIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 30 APR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BOGOTA04295
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760165-0800
From: BOGOTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t1976045/aaaaaddu.tel
Line Count: 131
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 14 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 JUL 2004 by MartinML>; APPROVED <26 OCT 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CABINET TASK FORCE ON QUESTIONABLE PQYMENTS ABROAD: FOREIGN LAWS ON QUESTIONABLE PAYMENTS
TAGS: PGOV, PFOR, EINV, CO, US
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006